

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

05-CR-6161L

v.

JOHN NICOLO, DAVID FINNMAN and  
CONSTANCE ROEDER,

Defendants.

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By letter dated March 4, 2008, submitted by facsimile, counsel for defendant John Nicolo requested the Court to reconsider its prior decision denying defendant's request that he and his physicians testify via video conference concerning defendant's recent request to adjourn the trial for three months. The request is denied.

At this late date, a hearing is necessary to deal with the request for the continuance, based on alleged medical issues, and that should be by "live" testimony in open court, subject to cross-examination.

If defendant Nicolo declines or refuses to testify in support of his motion, then the Court will decide the motion based on the evidence presented.

The Court's staff had suggested several dates for this hearing and March 5 was one of those dates. Defense counsel never confirmed with the Court's staff that March 5 was an agreeable date and that he was ready to proceed on that day or any other date, until the Court received the above-referenced fax letter at 12:09 p.m. on March 4, 2008.

IT IS SO ORDERED.



DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 4, 2008.